

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

EDISON SELECT d/b/a EDISON SECURITY
A DIVISION OF EDISON ENTERPRISES¹/

Employer

and

Case 31-RC-7948

COMMUNICATION WORKERS OF
AMERICA, AFL-CIO

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding²/, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ / The name of the Employer appears as corrected in the Hearing.

² / The Employer attached two documents to its post-hearing brief and requested for the first time that these be included in the record in this case. No request was made at the Hearing to leave the record open so that such documents could be offered in evidence after Petitioner had an opportunity to inspect them, question the custodian or lodge any objection. Accordingly, the documents attached to the Employer's post-hearing brief shall be excluded from the record in this proceeding.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein³/.

3. The labor organization involved claims to represent certain employees of the Employer.⁴/

4. Based upon the record herein, no question affecting commerce exists concerning the representation of the petitioned-for employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons.

The sole issue presented by the Employer at the Hearing was whether the alarm operators and the alarm dispatchers (also known as radio dispatchers) employed by the Employer at its Santa Monica Branch are guards within the meaning of the Act. In its brief, however, the Petitioner claims that the "Alarm operators, Radio Dispatchers and Data Entry Employees are not 'guards' pursuant to Section 9(b)(3) of the National Labor Relations Act." I, therefore, expand the issue to include whether the data entry employees, who are under the same supervision as the aforementioned employees, are guards within the meaning of the Act. I will address these issues after summarizing the factual background.

The Employer provides security systems and services to residential and commercial customers in a wide geographical area including Santa Barbara, Pacific Palisades and Santa Monica.

³ / The Employer is engaged in the retail and non-retail business of security system installation, maintenance and monitoring, and protection services in the State of California. Within the past 12 months, a representative period, the Employer has had gross revenues in excess of \$500,000. During that same period, the Employer purchased and received in California materials and supplies valued in excess of \$50,000 directly from suppliers located outside the State of California. Therefore, the Employer satisfies the statutory jurisdictional requirement, as well as the Board's discretionary standard for asserting jurisdiction over non-retail enterprises. *Siemons Mailing Service*, 122 NLRB 81 (1959)

⁴ / The Petitioner admits that it represents and accepts as members individuals who are not guards.

The Santa Monica Branch is a twenty-four hour operation seven day per week. There the Employer engages a force of employees which includes service dispatch employees who install and service alarm systems and equipment, data entry employees, patrol officers (also called security officers), alarm operators, and alarm dispatchers (the title used in the job description for this classification.) All the employees are subjected to background checks upon hire and wear identification badges during their shifts.

The Santa Monica Branch office is in a two story building. About forty-six service dispatch employees make up the Service Department which is located on the first floor of the building. They generally try to assist customers with system problems over the telephone. When such assistance fails, a service appointment at the customer's premises is scheduled. At the Hearing the Petitioner clarified the petitioned-for unit to exclude the service dispatch employees in the Service Department, and to include only the alarm operators, alarm dispatchers, and data entry employees working at the Employer's Santa Monica Communication Center.

There are two departments on the second floor of the building, the Communication Center and the Patrol or Security Department. The Communication Center consists of employees in three classifications. There are about five data entry employees, twenty-four alarm operators, and seven alarm dispatchers. Each of these classifications occupies its own separate work area. They punch the same time clock at the start of their shifts, and they are under the same supervision. There are a total of four supervisors in the Communication Center who work on one or the other of three shifts and are assisted by lead persons from each of the three classifications. The supervisors report to the Communication Center manager who reports directly to the director of monitoring and dispatch. The Communication Center is accessible through two doors. A third door separates the radio dispatch employees from the work areas of

the other two classifications. Access into the radio dispatch employees' work area requires a key fob.

The Employer's patrol officers are in the Patrol Department. They are supervised by patrol supervisors or lieutenants. These officers wear uniforms, carry batons and a service gun. They are also required to wear an identification badge during work hours. They function as on-duty security guards on each of the shifts. It is evident from the record that they have the authority to enforce the Employer's rules and regulations with respect to employees and persons engaged in unauthorized conduct. They also respond to alarm emergencies on customers' premises. No party claimed the patrol officers should be included in the petitioned-for unit.

The Santa Monica Branch building has about four doors leading to the outside of the building. However, access into the building is through the front door which is kept locked, is equipped with a buzzer, and is monitored by a mounted surveillance camera. About a year ago additional surveillance cameras were installed inside and outside the building, bringing the total number of cameras on the Employer's premises to about six. Images and activities from these cameras are transmitted to television monitors located in the work area of the alarm operators via a closed-circuit television system. These images are also recorded on cassettes. The building's emergency door is the only door that is equipped with an alarm system.

To gain ingress into the building a visitor rings the buzzer at the front door which reverberates at the front desk, situated just inside the front door. The buzzer also sounds in the alarm operator's work area. During day time business hours a receptionist responds to the buzzer and communicates with all person seeking admission. There is a security officer in the building during day time business hours.

ALARM OPERATORS

A valid alarm agent permit from the State of California is required for all alarm operators. They are required to have an alarm operator certification/level 1, and a radio dispatcher certification/level I. Their training, which is usually conducted by a lead person, consists of two-weeks of hands-on training on how to operate different types of alarm systems, of which there are several. They are provided with reference manuals containing various alarm resolution codes for use during their day to day activities. They do not wear a uniform, nor do they carry any weapon. Like other employees they are required to wear an identification badge during their shifts. They are assigned to three shifts each day: from about 7:00 a.m. to 3:00 p.m., from 3:00 p.m. to 11:00 p.m., and from 11:00p.m. to 7:00 a.m. They punch the same time clock as the data entry employees and the radio dispatch employees and report to the same supervisor as the latter two classifications. Their work area has about eight work stations with computers and television monitors. There are usually about five to six alarm operators on each of the three shifts on any given day.

Alarm operator duties are two fold. Their main duty involves watching for alarms from customers' premises and responding as necessary. When a customer's alarm goes off, it registers on an alarm receiver and a screen, or "cage", pops up on the alarm operator's computer screen. The operator pulls up the screen which provides the history of the customer, such as the customer's address, telephone number, password, and account number. With this information, the alarm operator telephones the customer's residence, or business as the case may be, advises the customer that he/she is calling on behalf of the Employer, verifies the customer's password, and ascertains the reason for the alarm. If the customer requests it, the alarm operator will stay on the line with the customer until the issue is resolved.

If there is no security problem, the alarm operator clears the alarm and proceeds to respond to other alarms. If, upon telephoning the customer's premises, the alarm operator receives an answering machine, the operator immediately forwards a message through the computer to the alarm radio dispatch work area alerting them of the situation and the need for radio communication with the Patrol Department for further investigation.

A "duress call" or "hold up" alarm may register on the alarm operator's computer screen. The alarm operator reacts to this form of alarm by immediately contacting the police department in the area of the customer's premises. The alarm operator may, in addition, contact the Patrol Department and request that a security officer be dispatched to the customer's premises. This type of alarm is considered an emergency and remains so until it is determined to be false by a security officer or a police officer.

When a customer's alarm system malfunctions in a specific zone, the zone will continue to register on the alarm operator's computer screen. The alarm operator contacts the customer and informs the customer of the malfunctioning zone. The customer may request to be transferred to the Service Department or inform the alarm operator to ignore the malfunction entirely.

Each alarm response and action taken are documented by the alarm operator via computer on to the customer's account. Alarm operators never go to a customer's premises in response to an alarm.

In addition to the above responsibilities, alarm operators are required to ensure that unauthorized persons do not enter the building. As mentioned above, the buzzer at the front door of the building reverberates at the front desk and in the work area of the alarm operators. Also, the television monitors on which the images and activities from the surveillance cameras appear are located in the work area of the alarm operators. During the second and third shifts

there is no receptionist at the front desk nor is there an on-duty guard during these latter two shifts. The alarm operators have the responsibility and capability of determining who is at the front door by observing the image(s) on the television monitors, and responding to the front door buzzer. Using an intercom, they communicate with the person seeking entry. They also have a mechanism by which they can unlock the door from their work area. If the person states that he/she is there to see someone in the building, the alarm operator confirms this with the person in the building by telephone and requests that the stranger be escorted into the building. If the person seeking entry is unknown to the alarm operator, and states no cognizable reason for being at the building, the alarm operator will refer the matter to his supervisor. If the person or the activity portrayed on the television monitor from the front door camera looks suspicious, the alarm operator has the option of contacting a patrol supervisor, or the on duty patrol officer, or the police.

ALARM DISPATCHERS

Like the alarm operators, alarm dispatchers are part of the Communication Center group, they wear identification badges, they work the same three shifts as the alarm operators, they are under the same supervision, and they occupy their own work area on the second floor. They also have the capability to receive alarm signals on their computer screens and to respond in the same manner as alarm operators. They may receive telephone calls dealing with emergencies or other alarm issues directly from customers. They use a 2-way radio to provide information to the Patrol Department to dispatch patrol officers to customers' premises as needed in response to emergency alarms. They are required to input data on dispatch activities and customer contacts. In addition to a valid alarm agent permit from the State of California, alarm dispatchers are required to have an alarm operator certification/level 1 and a radio dispatcher certification/level II. They do not wear a uniform nor carry a weapon, nor do they go

to customers' premises in response to an alarm. Unlike the alarm operators, they neither have surveillance television screens in their work area, nor are they required to monitor and report unusual activities on the Employer's premises.

DATA ENTRY EMPLOYEES

Data entry employees are required to have computer skills in WordPerfect and Lotus, as well as a valid alarm permit from the State of California, an alarm operator certification/level I, and a radio dispatcher certification/level II. Data entry employees, in conjunction with the alarm operators and the alarm radio dispatch employees, make up the Communication Center. They work in their own separate area, and share supervision with the latter two classifications. Their primary duty is to input customer information into the computers. Customers needing special watches, for instance when they are going out of town, will telephone the data entry employees directly to state when they are leaving and returning, and to provide a telephone number where they may be reached in the event of an alarm on their premises.

Incidental to the above primary duty, data entry employees are used as fill- ins to monitor alarms in the same manner as alarm operators and alarm dispatchers. This usually occurs when there is a major power outage, or whenever there is a shortage of alarm operators to respond to incoming alarms. Data entry employees do not have surveillance television screens in their work area nor are they required to monitor ingress and egress from the building. They are assigned to two shifts each day as opposed to three.

LEGAL ANALYSES

Section 9(b)(3) of the Act prevents the Board from including in a unit which includes any nonguard employees "any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." This provision also prevents the Board from certifying any labor

organization as the representative of a guard unit "if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

It is not only the protection of the employer's property which satisfies the guard criteria. As stated in *Brink's Inc.*, 226 NLRB 1182, 1183 (1976), "The Board had long held, with court approval, that the foregoing definition (of guard) applies equally to persons engaged in protecting property of the employer's customers." This standard was further affirmed by the Board in *Purolator Courier Corp., (Purolator II)*, 300 NLRB 812 (1990), requiring that in order to qualify for guard status under Section 9(b)(3) of the Act, the employee must be "engaged directly and substantially in the protection of customer property." Thus, the only issue presented here is whether the alarm operators, the alarm dispatchers, and the data entry employees in the petitioned-for unit satisfy either or both of the aforementioned guard criteria.

The evidence in this case indicates that an essential part of the duties of the alarm operators and the alarm dispatchers is to respond to alarms and take appropriate action to protect customer premises and ensure customer safety. In *Brink's Inc., supra*, the coin operators had the responsibility to ensure that unauthorized persons did not enter the coin room where the customers' coins were stored in the coin vaults. The Board found that the coin operators, in protecting the customers' property, possessed the indicia of guards as defined in Section 9(b)(3) of the Act.

It is clear that the critical inquiry is: (a) whether the employees in question protect the employer's property, or the safety of persons on the employer's premises and/or; (b) whether the employees protect customers' property or persons on that property. In none of the cases cited in Petitioner's brief does the Board's decision turn on whether the employee wore a

uniform and/or carried a weapon, but rather, on whether the employee performed guard-like duties of the type indicated in the aforementioned criteria.

Rhode Island Hospital, 313 NLRB 343 (1993), dealt with security dispatchers who, like the employees in this case, monitored the closed circuit TV system in the security station. The TV cameras covered specific locations inside and outside the Hospital's building. When the dispatchers observed any incident or problems that needed responding to they called the security officers. Depending on the situation, dispatchers also called the city police department. They never investigated security problems and they never confronted employees or other persons to enforce the hospital's rules. The Board held that the dispatchers were guards because their responsibilities were an essential link in the hospital's effort to safeguard its employees and enforce its rules. The Boeing Company and International Association of Fire Fighters, 328 NLRB No. 25, (1999), and Burns International Security Services, 300 NLRB 298 (1990), are factually distinguishable from the instant case. In both cases the Board held that the firefighters were not guards as their primary and essential functions were related to the prevention and suppression of fires and not plant security. In Wolverine Dispatch, Inc., 321 NLRB 796 (1996), the receptionists' functions were primarily clerical. The Board determined that they were not guards, and that occasional filling in for control room personnel was too sporadic and for too brief a duration "to support a finding that the receptionists protect the property of the Employer..." *Id.* at page 799. Liberty Owners Corp., 318 NLRB 308 (1995), is also factually distinguishable from this case. The Board found no evidence that the doorpersons and elevator operators in Liberty protected the property of the employer or the safety of persons on the premises. Hoffman Security, 302 NLRB 922 (1991), dealt with receptionists who monitored access to the patient and medical service floors by distributing visitor passes and/or asking visitors to sign in. Visitors frequently proceeded directly to the elevators sometimes unobserved

without first stopping at the reception desk. They did not prevent unauthorized persons from entering the premises. The Board held that the facts did not show that the receptionists performed guard duties and were, therefore, not guards within the meaning of the Act. In Guards Union Local 79 (ICI Americas, Inc.), 297 NLRB 1021 (1990), the Board held that receptionists whose primary function was performing general typing and clerical duties were not guards. In Republic Aviation Corp., 106 NLRB 91 (1953), the Board found that the receptionists were guards because their main function was to regulate access to the employer's facilities and to deny entry to unauthorized persons and they did not perform any clerical functions. Their duties included reporting violations of rules and regulations for the protection of personnel and property. The receptionists in Westinghouse Electric Corp. 96 NLRB 1250 (1951), were determined to be guards because their interests were closely allied to those of the employer's policemen. They were under the same supervision and received the same rate of pay. They also had the same authority as the policemen who had as their basic responsibility the protection of the employer's plant. In Brinks, Inc., 272 NLRB 868 (1985), the Board, relying on its previous decision in Brinks, Inc., 226 NLRB 1182 (1976), held that the coin operators were guards because they had the responsibility to protect the customers' property.

The Board has consistently recognized that when the employees in question meet the statutory requirement for guards, the fact that they do not take direct action against violators, or, as in this case, go to the customers' premises, but instead report suspicious activity to a third party, will not defeat their guard status. See, MGM Grand Hotel, Las Vegas, 274 NLRB 139 (1985); Rhode Island Hospital. *supra*. Likewise, the fact that they do not wear uniforms or carry firearms does not impair their guard status. See, Peco Energy Company, 322 NLRB 1074 (1997). In Peco, the janitor monitored security cameras placed throughout the property. He was responsible for checking people into the property and for reporting infractions. The

investigations of any suspicious situations that the janitor reported were handled by the shift manager. The Board held that despite the janitor's formal classification, he functioned as a guard. In Crossroads Community Correctional Center, 308 NLRB 558 (1992), employees called "Correctional Residence Counselors" who kept unauthorized persons off the property and protected the premises were found to be guards although they did not wear uniforms and did not take direct action against violators of company rules but instead were instructed to report suspicious activity to a third party. Likewise, in Thunderbird Hotel, 144 NLRB 84 (1963), timekeepers who protected the employer's property and kept out unauthorized persons were found to be guards although they did not wear uniforms or badges.

The Employer claims that on October 29, 1992 the petitioned-for alarm operators and alarm dispatchers were found to be guards by Region 21 of the NLRB in a previous case involving Westec Security, Inc. (a predecessor employer) and the Petitioner (21-RC-19106). The evidence indicates, however, that unlike the alarm operators and alarm dispatchers in the aforementioned case, the duties of the alarm operators and alarm dispatchers in this case do not include ensuring that there are no persons in secure areas and that all doors are locked. Nor are the alarm operators or the alarm dispatchers in this case required to physically conduct investigations of suspicious activities observed on the video screen. Notwithstanding these differences, the alarm operators and alarm dispatchers here perform significant guard functions that involve protection of the Employer's property, ensuring the safety of customers, and protection of their premises.

In Walterboro Manufacturing, 106 NLRB 1383, 1384 (1953), the Board held that "It is the nature of the duties of guards and not the percentage of time spent in such duties which is and should be controlling." See, also, A.W. Schesinger Geriatric Center, Inc., 267 NLRB 1363 (1983). Therefore, the identical analysis used to determine the status of the alarm operators

and the alarm dispatchers should be applied to the data entry employees who are included in the petitioned-for unit in this case. Though the data entry employees' primary function is to input customer data and information, the record makes clear that at critical times they are required to monitor customers' alarm systems and take protective action when necessary in the same manner as the other two classifications of employees in the Communication Center. It is not determinative that monitoring is not their only function, because it is a continuing responsibility and a significant part of the requirements of their job. Wackenhut Corp., 196 NLRB 278 (1972). Apart from computer skills in WordPerfect and Lotus, data entry employees are also required to have the same permits and certifications required of the alarm operators and alarm dispatchers, and they are under the same supervision as the aforementioned employees.

The alarm operators, alarm dispatchers, and data entry employees constitute an integrated group all working under the same supervision. Each classification contributes to the basic objectives of the Employer's business, the overall protection of customers' premises. I, therefore, find that these employees are guards within the meaning of the Act.

In addition to monitoring customers' security systems, the alarm operators are charged to enforce the Employer's rules forbidding unauthorized persons from entering the Santa Monica building. Employees performing similar functions have been found to be guards under the Act. The operators in the J.C.-80 room in MGM, supra, used closed-circuit television screens to monitor and report possible security problems and infraction and possible life-endangering situations. Like the alarm operators in this case, the operators in MGM performed no physical duties in either investigating or resolving abnormal situations, rather these abnormalities were reported directly to security officers. The Board in MGM held that the operators are as closely involved in protecting the employer's property and enforcing security as the employer's officers

and guards, and that they are guards under Section 9(b)(3) of the Act. Thus, to the extent that the duties of the alarm operators involve protection of the Respondent's property, I find that these employees satisfy the guard criteria under the Act.

Having found that the Employer's employees who are classified as alarm operators, alarm dispatchers, and data entry employees are guards within the meaning of Section 9(b)(3) of the Act, and, inasmuch as the Petitioner admittedly represents nonguard employees, the petition shall be dismissed because the Board is precluded under Section 9(b)(3) from certifying such a petitioner for a unit of guards. *A.D.T. Co.*, 112 NLRB 80 (1955).

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by December 28, 2000.

DATED at Los Angeles, California this 14th day of December 2000.

/s/ Byron B. Kohn
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